

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION

TIMOTHY GUERRA,

Plaintiffs,

vs.

GARY KEMPKER, et al.,

Defendants.

Case No. 2:03-CV-85 CEJ

ORDER

This matter is before the Court on Timothy Guerra's notice of appeal [Doc. #141] from this Court's August 1, 2006 order granting defendants' motion to dismiss [Doc. #133 and Doc. #134].

28 U.S.C. § 1915 (a)

Title 28 U.S.C. § 1915(a)(1), (2) requires a prisoner seeking leave to appeal in forma pauperis to submit an affidavit of indigency and a certified copy of his prison account statement for the six month period immediately preceding the filing of the notice of appeal. Furthermore, § 1915(b)(1) requires a prisoner seeking leave to proceed on appeal in forma pauperis to pay the full amount of the filing fee.¹ If the prisoner has insufficient funds in his prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account; or (2) the average monthly balance in the prisoner's account for the prior six month period. See 28 U.S.C. § 1915 (b)(1). After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the

¹On April 10, 2006, the filing fee for filing an appeal increased to \$455. This consists of a \$5 fee, usually referred to as a "filing fee," and a \$450 fee, usually referred to as a "docketing fee." The \$5 fee is required by 28 U.S.C. § 1917 "[u]pon the filing of any separate or joint notice of appeal." The \$450 "docketing fee" is required by resolution of the Judicial Conference of the United States acting pursuant to its authority to determine "[t]he fees and costs to be charged and collected in each court of appeals." 28 U.S.C. § 1913.

preceding month's income credited to the prisoner's account. See 28 U.S.C. § 1915 (b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid.

Discussion

Plaintiff has not submitted a motion for leave to proceed in forma pauperis on appeal or a certified copy of his prisoner account statement. However, the Court assumes that because plaintiff did not submit the filing fee with his notice of appeal, he intends to seek leave to proceed in forma pauperis on appeal. Therefore, the Court will order plaintiff to submit an affidavit and a certified copy of his prisoner account statement for the six- month period immediately preceding the filing of his notice of appeal pursuant to 28 U.S.C. § 1915(a)(1)(2).

In accordance with the foregoing,

IT IS HEREBY ORDERED that plaintiff shall file a certified copy of his prisoner account statement for **the six-month period immediately preceding the filing of his notice of appeal on September 6, 2006**, and a “motion to proceed on appeal in forma pauperis and affidavit in support -- prisoner cases” within thirty (30) days from the date of this order. ²

IT IS FURTHER ORDERED that if plaintiff fails to submit a certified copy of his prisoner account statement and a “motion to proceed on appeal in forma pauperis and affidavit in support” within thirty days from the date of this order, the Court will order him to pay the full \$455 filing and docketing fees for filing an appeal.

²When requesting a certified copy of his prison account statement, plaintiff is instructed to inform the Missouri Department of Corrections that the account statement must include all activity on his account during the six-month period preceding the filing of his notice of appeal on September 6, 2006.

IT IS FURTHER ORDERED that the Clerk shall forward, together with a copy of this order, a form “motion to proceed on appeal in forma pauperis and affidavit in support -- prisoner cases” to plaintiff to complete and return with his certified copy of his prisoner account statement.

Dated this 15th day of September, 2006.


UNITED STATES DISTRICT JUDGE